

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090193

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On September 3, 2013, Attorney Warren Finn for Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Torrance Unified School District (District) as respondent. The complaint alleges a single issue that the District failed to reimburse Student's family for the cost of 10 days of Extended School Year program at Student's nonpublic school, where he was placed by the November 8, 2012 Individualized Education Program (IEP).

On September 9, 2013, the District filed with OAH a Notice of Insufficiency. On September 9, 2013, OAH, by the undersigned, found Student's complaint sufficient.

On September 11, 2013, the District filed a Motion to Dismiss on grounds that Student's parent (Parent) lacks standing since Student is over the age of 18. The complaint states that Student was born on March 14, 1995, which means that he turned 18 on March 14, 2013. In support of its motion, the District submits a declaration by Tami Dowgiecz, a program specialist for the District who has Student on her caseload. Ms. Dowgiecz declares that "the District has never received documentation that he [Parent] has conserved Student or has been assigned Student's educational rights" since Student turned 18.

On September 17, 2013, OAH, by the undersigned, issued an order deferring ruling on the District's motion to dismiss and requiring Student to file documentation of educational rights.

On September 20, 2013, Student filed with OAH a copy of the conservatorship papers issued by the Los Angeles Superior Court showing that Student's parents were appointed Student's joint conservator pursuant to Probate Code section 2351.5.

APPLICABLE LAW

Under federal and California special education law, when a student is eligible for special education reaches the age of 18 years, the special education rights previously held by the parent transfer to the student. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.) Specifically, Education Code section 56041.5 provides:

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

DISCUSSION

On September 20, 2013, Student submitted the Court order appointing Student's mother and father as his conservators. The Court order included granting the conservators powers under Probate Code section 2351.5. Section 2351.5 grants the limited conservator the power to procure educational services that will assist the conservatee in the development of maximum self-reliance and independence. Thus, the petitioner has demonstrated that he possesses Student's educational rights. Accordingly, the District's motion is without merit.

ORDER

The District's motion to dismiss is DENIED.

Dated: September 20, 2013

/s/

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings